

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 865 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RABARI LALABHAI JIVABHAI

Versus

STATE OF GUJARAT

Appearance:

MR BIPIN P JASANI for Petitioner
MR MA BUKHARI AGP for respondent No.1.

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 16/06/2000

ORAL JUDGEMENT

1. What is challenged in this petition which is filed under Article 226 of the Constitution of India is the order dated February 3, 1988 passed by respondent No.2, the Principal of Sheth C.N. Vyayam Vidyabhavan (College of Physical Education), by which the petitioner was denied admission to Diploma Course in Physical

Education for the academic year 1987-88 and also the Resolution dated April 24, 1981 issued by Education Department of Government of Gujarat, whereby the criteria for admission to various courses of Physical Education have been prescribed.

2. The petitioner is serving as Physical Training Instructor in Diwan Ballubhai School at Ahmedabad. The petitioner who belongs to Baxi Panch had made an application seeking admission to Diploma Course in Physical Education to the respondent No.2 for the academic year 1987-88. By relying upon the Government Resolution dated April 24, 1981 issued by the Education Department wherein the criteria including the relaxation of the age limit by five years for Scheduled Caste and Scheduled Tribe candidates has been prescribed, the respondent No.2 by letter dated February 3, 1988 informed the petitioner that the age limit fixed by the Government for the said course is between 20 and 30 and since as on 1.7.1987 the petitioner was of the age of 34 years he cannot be given admission to the said course. It is contended by the petitioner that the said Government resolution is arbitrary and violative of fundamental rights enshrined in the Constitution of India since it deprives the petitioner from further studies and it creates discrimination between members of Baxi Panch on one hand and the members of SC and ST on the other. It is contended by the petitioner that for Post Graduation course for Physical Education conducted by the University no age limit is fixed. The petitioner therefore prayed to issue a writ of mandamus and/or a writ, order or direction in the nature of mandamus directing respondent No.2 to admit the petitioner to the Diploma Course in Physical Education and the Government may be directed to modify age limit of existing servants.

3. The petition is hotly contested by the State of Gujarat by filing reply affidavit wherein it is contended that there is no discrimination with regard to relaxation of age limit to the members of the SC & ST on one hand and the members of Baxi Panch. It is true that members of SC and ST have been given age relaxation of five years by virtue of the said Government resolution and the members of Baxi Panch have been given grace marks of 5% and, therefore, members of Baxi Panch have not been given benefit of relaxation of upper age limit of five years which was granted to the members of SC and ST. It was contended that the relaxation in age limit provided to a particular class and percentage relaxation provided to another class is a matter of policy of the Government and the said policy of the Government cannot be said to be

arbitrary and violative of any provision of the Constitution of India and ultimately it was prayed to dismiss the petition.

4. At the time of hearing of this petition, Mr. Jasani, learned advocate for the petitioner, contended that by virtue of Government resolution No.25B/1385/2084/A dated October 15, 1985, issued by Social Welfare Department of Government of Gujarat, a copy of which is produced on record and is hereby ordered to be retained on record, relaxation of upper age limit by five years is granted not only to the SC and ST candidates but to the members of Baxi Panch also and since there is no age limit for admission to Post Graduate course in Physical Education, the State Government may be directed to consider this petition as a representation of the petitioner for giving benefit of upper age limit to the members of Baxi Panch also. It may be noted that when the petition was admitted in the year 1988 the petitioner's age was 34 years and obviously now the petitioner has reached the age of 46 and undisputedly he is not entitled to admission to the Diploma Course in Physical Education. But Mr. Jasani, learned advocate for the petitioner, submitted that if the Government considers this petition as a representation and accords benefit of relaxation of upper age limit by five years to the members of Baxi Panch it would meet the ends of justice.

5. Mr. Bukhari, learned A.G.P., has also no objection if necessary direction is issued to the Government to consider this petition as a representation of the petitioner in favour of the members of Baxi Panch for giving benefit of relaxation of upper age limit by five years to the members of Baxi Panch.

6. It is true that in this petition when Rule was issued the petitioner was aged 34 years and now he is 46 years old and, therefore, undisputedly he is not entitled to admission to Diploma course in Physical Education. It is true that since the Government has accorded benefit of the Government Resolution dated 24.4.1981 to the members of SC and ST why the members of Baxi Panch should be deprived of it when all three classes are treated equally so far as employment and promotion in Government service are concerned. Therefore, Government of Gujarat is hereby directed to consider this petition as a representation and decide it in light of the subsequent Government resolution dated October 15, 1985 issued by the Social Welfare Department and accord the benefit of relaxation of the upper age limit by five years to the

members of Baxi Panch also so far as admission to Diploma Course in Physical Education is concerned.

7. With the aforesaid observation and direction this petition is rejected. Rule is discharged. There shall be no order as to costs.

16.6.2000. (A.M.Kapadia,J.)
